

AMENDMENT UNDER 37 C.F.R. 1.116

Serial Number: 09/458,862

Filing Date: December 10, 1999

Title: COMPOSITIONS AND METHODS FOR CRYOPRESERVATION OF PERIPHERAL BLOOD LYMPHOCYTESPage 11
Dkt: 600451US1Remarks

Claims 1-2, 6, 14, 20, 26, 30-31, 37, and 53-58 are amended, claims 59-60 are added, and claims 35-36 are canceled. The amendments are intended to place the application in better form for appeal and are not intended to concede to the correctness of the Examiner's position or to prejudice the prosecution of the claims prior to amendment, which claims are present in a continuation of the present application. Claims 1-8, 11-12, 14, 16-17, 19-22, 24, 26-28, 30-34, 37-44, and 47-60 are pending.

The amendment to claims 1, 26, and 53-58, to recite "activated or genetically," is supported at page 4, lines 24-26 of the specification.

Amended claims 14, 31 and 37 are supported by originally-filed claims 1, 13-14 and 31, and at page 4, lines 24-26 of the specification.

Amended claims 2 and 30 are supported by originally-filed claims 1-2, 26 and 30.

Amended claims 6 and 20 are supported by originally-filed claims 6 and 20, respectfully.

New claims 59-60 are supported at page 4, lines 16-19 of the specification.

The Examiner is requested to note that the present Amendment was referred to in Appellant's Brief on Appeal mailed September 24, 2003 (see Section 4), and the claims herein were argued in the Brief and were included in Appendix I of that Brief. It is Appellant's position that the amended claims are in better form for appeal.

For instance, the amendment to claims 1-2, 14, 26, 30-31, 37, and 53-58 addressed the 35 U.S.C. § 112, second paragraph, rejection of claims 1-8, 11-12, 14, 16-17, 19-22, 24, 26-28, 30-44, and 47-58 over the phrase "lymphocytes modified *ex vivo*". The amendment to claims 14 and 31 (both in Group I) to recite "wherein the arabinogalactan, biological or functional equivalent thereof, in the medium results in a high post-thaw survival rate for the freshly isolated lymphocytes, hematopoietic stem cells, or lymphocytes which are activated or genetically modified *ex vivo*" provides consistency to the claims in Group I (note that independent claims 1, 53 and 55, which are also in Group I, already recited this phrase). The amendments to claims 26 and 58 (both in Group II) provide consistency to and correct grammatical errors in those claims. The amendments to claims 6, 14, 20, 54, 56, and 57 correct grammatical errors, e.g., the insertion of "the" or "and glycerol" or the deletion of "or a".

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If necessary, please charge any additional fees or credit overpayment to Deposit Account
No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeals, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9 day of February, 2004.

Name Dawn M. Foley

Signature Dawn M. Foley

Receipt is hereby acknowledged for the following in the United States Patent and Trademark Office:

In re Patent Application of: Allison Hubel
Title: COMPOSITIONS AND METHODS FOR CRYOPRESERVATION OF
PERIPHERAL BLOOD LYMPHOCYTES

Serial No.: 09/458862

Filing Date: December 10, 1999

CONTENTS: Appellant's Reply To Examiner's Answer (8 Pages), in triplicate;
Amendment Under 37 C.F.R. 1.116 (8 Pages); Return Postcard and TRANSMITTAL
SHEET.

Mailed: February 9, 2004
JEE/dmp

Docket No. 600451US1
Due Date: February 10, 2004

